

ASSEMBLY BILL

No. 1236

Introduced by Assembly Member DeVore

February 22, 2005

An act to add Chapter 4 (commencing with Section 1630) to Part 5 of Division 4 of the Family Code, relating to marital contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1236, as introduced, DeVore. Marriage Choice Act of 2005.

Existing law establishes the procedures by which parties to a marriage may seek a dissolution of marriage. Existing law also governs marital agreements between a husband and wife.

This bill would enact the Marriage Choice Act of 2005. The bill would prohibit married parties with children together who have not completed high school from obtaining a dissolution of marriage on grounds of irreconcilable differences unless both parties have given consent, as prescribed. The bill would also establish procedures by which a couple may enter into a marital contract rejecting the right to a “no fault” divorce, except in certain circumstances. The bill would require couples seeking to enter into this type of marital contract to undergo specified marital counseling and education before entering into that contract, and also before divorcing. The bill would require county clerks to develop and make available to the public choice forms, as defined, in accordance with the act. The bill would also require a county clerk to file and keep completed choice forms within the county’s permanent records and to establish a directory of marriage education or skills training providers within its office, as specified. By placing additional duties on local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A primary purpose of government is to promote the general
- 4 welfare. Yet current divorce laws have created a situation that
- 5 does not further the general welfare, but rather degrades it.
- 6 (b) Children of divorce generally fare more poorly in school,
- 7 in the workforce, and in their own relationships relative to
- 8 children from intact homes.
- 9 (c) Divorced men smoke more, drink more, and have more
- 10 unhealthy diets than their married counterparts.
- 11 (d) The various cultural neuroses that are directly attributable
- 12 to divorce and its byproducts are a large part of why the
- 13 entitlements in our budget are growing at such a rapid rate.
- 14 (e) No fault divorce has contributed to an increased divorce
- 15 rate, which in turn has caused many negative impacts on society.
- 16 For instance, because of the increased incidence in divorce, more
- 17 than one million children annually experience the breakup of
- 18 their parents' marriage.
- 19 (f) As one might expect, the dissolution of families negatively
- 20 affects children psychologically, economically, and socially.
- 21 Several studies of children in broken homes found they had
- 22 higher occurrences of psychiatric illness, substance abuse,
- 23 suicide attempts, and pre-marital sexual activity.
- 24 (g) Additionally, a child who repeats a grade is more likely to
- 25 come from a family shattered by divorce.

1 (h) Divorce impoverishes many women and children, and
2 research shows that families that were previously middle class
3 saw their incomes drop by half after divorce.

4 (i) Moreover, broken marriages often require the enforcement
5 of child support, since many noncustodial parents fail to pay for
6 their children's reasonable financial upkeep. In 2000, state and
7 federal governments spent \$4.5 billion to enforce child support
8 programs.

9 (j) All of these consequences produce tremendous public costs
10 and a self-perpetuating cycle. According to Rutgers University's
11 National Marriage Project, 18 to 34 year olds are marrying at
12 greatly reduced rates, largely because many are the products of
13 divorce. Certainly, all grew up in a culture of divorce. Many are
14 afraid that if they marry, they too will get divorced and if they
15 are the product of divorce, the odds are they will.

16 (k) Consequently, many couples live together out of wedlock,
17 which creates several other problems. Those who cohabit are 50
18 percent more likely to divorce when they do marry and have a
19 higher rate of pregnancy complications compared with those who
20 are legally wed. These two factors can also produce a significant
21 outlay of taxpayer funds.

22 (l) It is in the interest of government policy makers to reverse
23 these financially destructive and personally devastating trends.
24 One way of doing this would be to give couples the choice of
25 strengthening marriage. Studies show that if couples persevere
26 for five years from the onset of their marital problems, their
27 marriage will be stronger and happier than before. Conversely, a
28 significant number of those who divorce say they later wish they
29 had not.

30 (m) By giving couples time and incentive to stay married, we
31 will bring down the rate of divorce and the costs associated with
32 it that our society can increasingly ill afford to pay.

33 (n) Thus it is incumbent upon the state to find some way of
34 encouraging marriages to stay together. In a state that values
35 individual freedom to the extent that California does, giving
36 couples the option to freely to make it more difficult to dissolve
37 their marriages harms no one and actually helps society as a
38 whole.

39 SEC. 2. Chapter 4 (commencing with Section 1630) is added
40 to Part 5 of Division 4 of the Family Code, to read:

CHAPTER 4. MARRIAGE CHOICE ACT OF 2005

1630. This chapter shall be known and may be cited as the “Marriage Choice Act of 2005.”

1631. For purposes of this chapter, the following definitions apply:

(a) “Choice form” means a form provided by the county clerk’s office to a married couple, or a couple entering into a marriage, which shall be completed by the couple and filed with the county clerk as set forth in this part.

(b) “County clerk” means the clerk of the county in which the parties have applied for a marriage license, or, if the parties are already married, the county in which the married couple resides.

(c) “No-fault dissolution of marriage” means a dissolution of marriage on the grounds of irreconcilable differences.

1632. If married parties have any children together by birth or legal adoption who have not completed or left high school, then a dissolution of marriage on grounds of irreconcilable differences shall not be granted unless both parties have given consent, as prescribed in Section 1634.

1633. (a) A couple who wishes to not be subject to the limitations on dissolutions of marriage set forth in Section 1632 shall do all of the following:

(1) Receive premarital education or marriage education together in accordance with this part from any of the providers described in Section 1635.

(2) Complete a choice form indicating their choice that a no-fault dissolution of marriage will be available, and filing the choice form with the county clerk. A choice form shall not be valid unless it is signed by both spouses, with each signature acknowledged or witnessed by a notary public or county clerk.

(b) A couple who is not subject to Section 1632 because they were married outside this state or married prior to the enactment of this part, may choose to become subject to Section 1632 by completing a choice form indicating their choice that a no-fault dissolution of marriage will not be available, and filing the choice form with the county clerk after they have received marriage education together from any of the providers described in Section 1635.

(c) The county clerk shall develop and make available to the public choice forms in accordance with this section. The county clerk shall also file and keep completed choice forms within the permanent records of the county. The forms shall be in substantially the following form:

WAIVER (option 1): “We hereby choose that a no-fault dissolution of marriage

_____ will

_____ will not

be available to us if and when (i) we have any child under 19 years of age who has not yet left high school, and (ii) one of us wants a dissolution of marriage but the other of us does not consent.”

WAIVER (option 2): “I understand that, pursuant to the laws of the State of California, married persons may obtain dissolution of their marriage only by claiming that the parties’ marriage is “irretrievably broken.” I understand that most, if not all, states in the United States may have similar laws permitting dissolution of marriage without requiring the proof of any reasonable grounds for dissolution of marriage.

By signing this written marriage contract, I knowingly and voluntarily waive any right to a dissolution of my marriage by any and all other statutory rights and provisions and specifically limit the availability of dissolution of marriage to only those specific reasonable grounds for dissolution of marriage which are herein enumerated.”

Signature of both married parties: _____

Dated: _____

Acknowledgment by notary public or county clerk:

NOTICE: This form is not valid unless signed by both spouses, with each signature acknowledged before, or witnessed by, a notary public or county clerk.

(d) A written agreement executed before or during marriage, in any other state or country, may specify whether, and under what conditions, “no-fault” grounds may be grounds for dissolution of marriage when the parties have children and do not

1 both consent to a dissolution of marriage. The agreement may
2 also specify a waiting period for a dissolution of marriage when
3 the parties do not both consent to the dissolution. For these
4 purposes only, any form provided by a court for the purpose of
5 making a choice, in any state or country, if signed by both
6 spouses and retained by the court or other governmental agency
7 or religious institution in its records, shall be presumed to be a
8 valid agreement. “No-fault” grounds include such grounds as
9 living apart, legal, judicial, or de facto separation, irretrievable
10 breakdown, incompatibility, or irreconcilable differences, as are
11 variously provided in the laws of various states and countries.

12 (e) For those who reject recourse to no-fault dissolution of
13 marriage, dissolution of marriage is restricted to the following
14 grounds:

15 (1) Adultery.

16 (2) Infection with a sexually transmitted disease when the
17 spouse seeking the dissolution of marriage did not know at the
18 time of marriage that the other spouse was infected, or the other
19 spouse acquired the disease after marriage from someone other
20 than the spouse petitioning for dissolution of marriage.

21 (3) Infection with a fatal disease when the spouse seeking the
22 dissolution of marriage did not know at the time of marriage that
23 the other spouse was infected with the disease.

24 (4) Abandonment by the other spouse for one or more years
25 preceding filing.

26 (5) Habitual addiction to alcohol or drugs.

27 (6) Failure to financially provide for the family.

28 (7) Imprisonment for two or more years.

29 (8) Physical abuse, extreme mental cruelty, or sexual abuse of
30 a spouse or child.

31 (9) Legal insanity.

32 (10) Mutual consent of both parties.

33 (f) Common law equitable principles may be raised as
34 defenses to the action. The contract may provide for remedies for
35 violation of the contract, including damages, dissolution of
36 marriage, or separation. A decree of dissolution that does not
37 conform to the marriage contract is null and void. A marriage
38 contract that limits the availability of dissolution of marriage to
39 only those reasonable grounds specified above shall contain an
40 express waiver of the right to obtain a dissolution of marriage

1 because of “irreconcilable differences” or because the marriage is
2 “irretrievably broken.” When obtaining a dissolution of marriage,
3 the petitioner shall allege the grounds pursuant to the contract. A
4 dissolution of marriage shall be granted if the other party does
5 not deny the alleged grounds or if the court finds that the alleged
6 grounds exist. The restrictions also apply to legal separations.

7 1634. (a) Consent to dissolution of marriage shall be either:
8 (1) unconditional, or (2) part of a written agreement, such as a
9 separation agreement, marital agreement, or premarital
10 agreement that is enforceable in its entirety.

11 (b) Consent shall be in writing unless it is given in open court.
12 Asking a court for a dissolution of marriage on any grounds
13 constitutes consent.

14 (c) Consent may be given at any time before the judge signs a
15 final judgment for dissolution of marriage. Consent is not
16 effective if given only when the other spouse is not proposing or
17 seeking a dissolution of marriage, except when given in an
18 agreement as described in subdivision (b).

19 (d) Whenever consent has been given by both parties, and no
20 other grounds have been proven satisfactorily, the court may
21 grant a dissolution of marriage on grounds of mutual consent.

22 (e) A party who has filed a choice waiver rejecting the option
23 of a no-fault dissolution of marriage shall not ask a court for a
24 dissolution of marriage until after the counseling and
25 consideration period set forth in subdivision (f) has elapsed.

26 (f) The counseling and consideration period is two years, less
27 six months for each of the following circumstances:

28 (1) The parties have never had children.

29 (2) The parties have a written agreement for dissolution of
30 marriage and the agreement covers all relevant issues.

31 (3) After the period begins, the parties obtain marriage
32 education.

33 (h) The counseling and consideration period begins when one
34 spouse delivers a marriage help request notice to the other
35 spouse.

36 1635. (a) Marriage education or skills training required by
37 this chapter may be provided by any of the following:

38 (1) An official representative of a religious institution, or any
39 clergy person authorized to perform marriages, or his or her

1 designee, including mentor couples or other lay volunteers, if
2 working in a clergy-supervised program.

3 (2) Marriage education providers or programs listed, funded,
4 or authorized by any of the following:

5 (A) The United States Department of Health and Human
6 Services.

7 (B) The United States Department of Agriculture Cooperative
8 Extension Service.

9 (C) The United States Department of Defense and the
10 individual military services of the United States.

11 (D) Any other federal, state or local government agency or
12 court.

13 (E) Smart Marriages / The Coalition for Marriage, Family and
14 Couples Education, which maintains a Web site available at
15 <http://www.smartmarriages.com>, or any of its component
16 programs.

17 (3) Any marriage education provider or program approved by
18 the person who has solemnized or is solemnizing the marriage.

19 (4) Marriage education or skills training providers listed in any
20 other online or printed directories whose use has been authorized
21 by the Clerk of the Supreme Court.

22 (5) Marriage education or skills training providers listed in
23 directories that shall be maintained by the county clerk's office.
24 Each directory shall consist of a binder in which the county clerk
25 may place the names of local providers and materials sent by
26 them, copies or Web site addresses of other lists or directories
27 authorized by this chapter, printouts of local sections of internet
28 online directories, and other materials or lists that the clerk
29 deems suitable.

30 (b) Proof of completion of marriage education or skills
31 training, or marriage counseling, for all purposes for which it
32 may be required by this chapter shall be submitted as follows:

33 (1) Proof of completion of training should be signed by a
34 provider, on the stationery, or other form or certificate, that is
35 used by the provider, program or sponsoring institution, but it
36 need not be notarized.

37 (2) If the provider is not yet in the county clerk's directory and
38 appears to the county clerk to be qualified as a marriage educator
39 under the terms of this section, the county clerk may add the
40 provider or the program to the directory, regardless of whether

1 the provider or program is already in another online or printed
2 directory or is clergy.

3 (c) (1) If a person who desires to reject recourse to no-fault
4 dissolution of marriage applies to the county clerk for a marriage
5 license, the county clerk shall ask if the couple has received or
6 are receiving marriage skills training, and from whom. If that
7 couple has not, or if the answer is vague, the clerk or deputy shall
8 inform that person that training may be available from clergy,
9 from programs offered by religious institutions, and that both
10 nonreligious and religious marriage educators are available from
11 the providers and directories that are authorized by subdivision
12 (a).

13 (d) Whenever marriage skills training is available in a
14 geographic area, information describing what marriage skills
15 training is, where it is available, and the purpose for marriage
16 training, shall be made available to the public. This information
17 may be provided to the public by the Internet, and also may be
18 provided to the public in any of the following circumstances:

19 (1) Upon application for a marriage license.

20 (2) Within offices of civil marriage celebrants.

21 (3) Within governmental offices that offer family services or
22 counseling, including any that provide services to single or
23 married parents or to newly released former prison inmates.

24 (4) Court clerk's offices that deal with domestic relations or
25 juvenile delinquency cases.

26 (5) Providers of court-referred or government-referred
27 dissolution of marriage education, parenting education, or
28 custody education programs.

29 (6) When taking marriage preparation classes, the couple shall
30 undergo the training together. If required by law or court
31 procedures as a prerequisite to dissolution of marriage, the
32 individual parties may undergo it separately and need not both
33 choose the same program or provider.

34 1636. (a) Except for evidence of living apart, a minor child of
35 either of the parties to a proceeding for dissolution of marriage
36 shall not give evidence of grounds for dissolution of marriage
37 and any statement of a child, by hearsay or otherwise, shall not
38 be used as evidence of grounds for dissolution of marriage.

39 (b) Except for evidence of living apart, imprisonment, or
40 conviction of a crime, evidence of grounds of dissolution of

1 marriage shall not be heard in open court, but instead shall be
2 heard in closed proceedings of the court.

3 (c) The court may nonetheless consider any evidence that it
4 finds to be relevant to matters before it. The sufficiency,
5 credibility, weight, role and use of admissions by the parties,
6 shall be the same in dissolution of marriage actions pursuant to
7 this chapter as in other actions in equity or at law.

8 (d) This section only applies to dissolution of marriage
9 proceedings for marriages subject to this chapter.

10 1637. This chapter applies as follows:

11 (a) Section 1632 applies to couples married on or after the
12 effective date of this chapter, except as specified in subdivision
13 (b).

14 (b) Section 1633 does not apply to couples who were not
15 married in this state or residents at the time of marriage, except:

16 (1) If the couple completed a choice form pursuant to
17 subdivision (a) of Section 1633, or a similar law of another state,
18 indicating an intent to be subject to the procedures prescribed by
19 Section 1633.

20 (2) If it is proven that the law prevailing at the time and place
21 of a couple's marriage outside this state did not provide for
22 unilateral no-fault dissolution of marriage as described in Section
23 1633.

24 (b) If a couple was married in another state or country whose
25 law at the time allowed a couple to make a choice of dissolution
26 of marriage rules at the time of the marriage or later during the
27 marriage, or if a couple made such a choice in another state at
28 some time during the marriage pursuant to legislation, and if that
29 couple has not completed a choice form in this state, then the
30 grounds for dissolution of marriage and other substantive
31 requirements chosen by the couple at the time of the marriage or
32 later, as provided by the law of the state where they did so, shall
33 apply instead of the dissolution of marriage grounds and other
34 substantive requirements provided by this state's law.

35 (c) If the place of last marital cohabitation was a state, district,
36 territory, province, or country that adjoins this state, and one
37 party to the marriage still remains in that place, then this state
38 shall not exercise any jurisdiction that it has to grant a dissolution
39 of marriage unless the out-of-state party consents to a dissolution

1 of marriage, and to the proceedings for dissolution of marriage
2 being heard in this state's courts.

3 (d) Regardless of where the couple entered into marriage, if
4 they have been married less than five years, they shall either
5 show proof of having completed or shall complete premarital
6 education courses through providers listed in Section 1635. If the
7 couple has been married for five years or more, they may
8 dispense with the premarital education requirement.

9 1638. In any dissolution of marriage proceeding commenced
10 on or after the effective date of this act, if there is a choice form,
11 agreement, or an out-of-state marriage of the kind described in
12 Section 1637, which may affect whether Section 1632 applies to
13 the marriage, then any petition for dissolution of marriage shall
14 refer to the choice form or other agreement. Failure to do so shall
15 not affect the validity or timeliness of the pleading, and later
16 written or oral amendment or stipulation shall be allowed
17 permitted up to the time of the hearing on grounds for dissolution
18 of marriage.

19 1639. Any marriage counseling or education required before
20 dissolution of marriage may be provided by any of the providers
21 listed in Section 1635, or by licensed behavioral health
22 professionals, psychologists, social workers, marriage and family
23 therapists, psychiatrists, pastoral counselors, certified family life
24 educators, or professional counselors, but not by a therapist who
25 is treating or has treated one of the spouses separately. The
26 individual parties may undergo it separately and need not both
27 choose the same program or provider.

28 SEC. 3. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.